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10/601,373	06/23/2003	Michael T. Miller	MD 110/01	7980

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EXAMINER

FISCHMANN, BRYAN R

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/601,373

Applicant(s)

MILLER, MICHAEL T.

Examiner

Bryan Fischmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-4 and 6 is/are rejected.
- 7) ☒ Claim(s) 1 and 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### ***Specification***

1. The disclosure is objected to because of the following:

A) The following recited phrases are unclear, awkwardly worded, and/or grammatically incorrect:

1) The first patent listed in a box on page 2 lists US 5,195,777 to Gonzalez as a "Fishing Cart Apparatus". In fact, US 4,195,777 is to Cuevas and is titled "Air Bag Inflator". It is believed that Applicant was intending to instead list US 5,159,777, to which Gonzalez is the inventor.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign not mentioned in the description: 31. Correction is required.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the structure allowing the collapsible cutting board "to collapse" as recited in claims 1 and 3 must be shown or the features canceled from the claims. No new matter should be entered.

See also the claim objection to claims 1 and 3 regarding the "collapsible cutting board".

### ***Claim Objections***

4. Claims 1-6 are objected to because of the following:

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A) Claim 1 recites on the last three lines of the claim "collapsible side mounted cutting board with the cutting board being removably mounted to the frame".

As best understood, the cutting board is only "removably mounted" to the frame, and is not "collapsible". Note that pages 9 and 10 of the specification teaches only that the cutting board is "removably mounted" and is "pivotable" with respect to the frame. There appears to be no mention of the cutting board being "collapsible".

See also claim 3 for a similar objection.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

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directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 2 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Ramsey, US Patent 6,560,791.

Ramsey teaches an equipment transportation system comprising, in combination:

a frame (Figure 1) fabricated of a rigid material and having a plurality of cross members ("sideways" portion of 30 and 32) and a plurality of wheels (22), the frame having a cooler (Figure 1) mounted thereto, the frame having a handle (23).

Regarding claim 3, the "cutting board" is reference number 122 and the "holster" is reference number 40. Regarding the term "collapsible", note that the cutting board may be removed from the holster and placed within the cart for transportation, thus being "collapsible", relative to the frame. See also the claim objection to claim 3.

7. Claims 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Helm, US Patent 5,641,170.

Helm teaches an equipment transportation system comprising, in combination:

a frame (Figure 1) fabricated of a rigid material and having a plurality of cross members (38, 40 and 42) and a plurality of wheels (Figure 2), the frame having a cooler (10) mounted thereto, the frame having a handle (Figures 1 and 2).

Regarding the recitation of "cooler" in claim 2, it is noted this limitation is drawn toward "intended use" of the claimed invention. The functional recitation of intended

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use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the function or intended use, then it meets the claim. *In re Casey*, 370 F.2d 576, 152 USPQ 235, 238 (CCPA 1967). It is the Examiner's position that the prior art is capable of performing the intended use, as reference number 10 can be filled with ice so that it will serve as a "cooler".

Once this prima facie case has been established, the burden shifts to the applicant to show that the prior art structure does not possess the functionally defined or intended use limitations of his claimed apparatus. *In re Schreiber*, 128 F.3d 1473, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

Regarding claim 4, the "storage compartment" is reference number 70. Note that the lower back side of reference number 70 has an "angled configuration".

8. Claims 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller, US Patent 5,203,815.

Miller teaches an equipment transportation system comprising, in combination: a frame (Figure 1) fabricated of a rigid material and having a plurality of cross members (Figure 4) and a plurality of wheels (Figure 2), the frame having a cooler (12a) mounted thereto, the frame having a handle (20).

Regarding claim 6, the "forwardly projecting flat load-carrying portion" is reference number 30a and the tackle box is reference number 12b.

***Allowable Subject Matter***

9. Claim 1 would be allowable if rewritten or amended to overcome the claim objection set forth in this Office action.
10. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Reasons for Allowance**

11. The following is an Examiner's statement of reasons for allowance of independent claim 1:

Claim 1 recites the limitation of an equipment transportation system, in combination, a frame having an upper and lower end and a middle portion, the middle portion having a plurality of cross members and a plurality of tubular fishing rod holders and an electrically powered live-well, a knife to be placed within a holster coupled to one of the fishing rod holders, the lower end of the frame having a rearwardly attached storage compartment having a rearward end and lower end, the lower rearward corner has an angled configuration, a cutting board holster coupled to the rearward side of the upper end of the frame, the powered live-well having an arcuately configured rearward lower corner and the lower end of the frame having a forwardly projecting flat load-carrying portion with a cooler mounted thereon. This limitation, in combination with the other limitations of claim 1, were not found in the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

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accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gonzalez, Pullman, Speicher and Lin – teach fishing carts

13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 8:30 to 5:00.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis, can be reached on (703) 308-2560. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 9-13-4  
**BRYAN FISCHMANN**  
**PRIMARY EXAMINER**